

LIABILITY

Definitions

“Curtailment” means a reduction in scheduled Transmission Services in response to a transmission capacity shortage as a result of system reliability conditions.

“Electric Disturbance” means any sudden, unexpected, changed or abnormal electric condition originating in a Power System that causes damage.

“Power System” means a single integrated electric power grid usually characterized by ownership, rental, lease, control or operation by a single person or entity. A “Power System” consists of electric distribution facilities or generating facilities or transmission facilities, or any combination of the three, and includes transmission lines, distribution lines, substations, switching stations, generating plants and all associated equipment for generating, transmitting, distributing or controlling flow of power. The term “Power System” shall include any devices or equipment by which information is originated on an electric system or by the person operating such system, by which such information is transmitted, and by which such information is received either for information or for operation of the system, whether by the originating system or by another system.

“Party or Parties” means [_____]

“Property Damage” means damage to or destruction of tangible property, real or personal, but does not include damages for any incidental or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue on work not performed; for loss of use of or under-utilization of the other Party’s facilities, or loss of use of profits or revenue.

“Replacement Power Cost” means the price at which a Party, acting in a commercially reasonable manner, effects a purchase of comparable electric energy and capacity at the delivery

point in place of the electric energy and capacity not delivered. If the Replacement Power Cost cannot be determined, it shall be deemed to be 125% of the applicable Mid-Columbia Dow Jones daily on-peak and off-peak price index, until such time as a published hourly Northwest power price index is established and available.

“Wrongful Dispatch Order” means an operating instruction that, under the applicable RTO West tariffs and agreements, RTO West was not authorized to communicate to a Party or a Scheduling Coordinator.

10. Force Majeure, Indemnification, and Limitations of Liability and Damages

10.1 Force Majeure: An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. No Party will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

[NOTE: The Filing Utilities are proposing removal of the indemnity section because it does not provide adequate protection for RTO West and Transmission Owners and adds nothing to the proposal previously made by the Filing Utilities]

10.2 Limitation of Liability:

(a) Except as provided in Section 10.3, no the Transmission Owner, generation owner or operator, load facility owner or operator, Scheduling Coordinator, power marketer, broker, aggregator or other agent shall be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, any third party or any other person, other than a Transmission Owner's or other distribution entity's liability to its own bundled retail customers, **[FOOTNOTE: – *this language assumes that FERC does not completely preempt state regulation of bundled retail service*]** for any damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages arising or resulting from any act or omission that results in an Electric Disturbance that causes an interruption, deficiency or imperfection of service, except to the extent that such person is found liable for gross negligence or intentional misconduct, in which case no such liability shall exist for any incidental, consequential, punitive, special, exemplary or indirect damages. Nothing in this section, however, is intended to affect obligations otherwise provided in agreements with RTO West or among other entities, including without limitation, agreements between Transmission Owners.

(b) Except as provided in Section 10.3, RTO West shall not be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary or indirect damages arising or resulting from any act

or omission that results in an Electric Disturbance that causes an interruption, deficiency or imperfection of service, except to the extent that RTO West is found liable for gross negligence or intentional misconduct, in which case RTO West will not be liable for any incidental, consequential, punitive, special, exemplary or indirect damages. Nothing in this section, however, is intended to affect obligations otherwise provided in agreements with RTO West or among other entities, including without limitation, agreements between Transmission Owners.

(c) No Party shall be liable for damages for any act or omission that results in an Electric Disturbance that causes an interruption, deficiency or imperfection of service, resulting from electric system design common to the national or regional electric utility industry or Power System operation practices or conditions common to the national or regional electric utility industry. No person receiving a directive from RTO West shall be liable for acts or omissions done in compliance or good faith attempts to comply with such directives.

(d) No Party shall be liable for any damages of any sort whatsoever to end-use retail customers of any other Party. With respect to generators, any and all limitations on liability shall be governed by the applicable Generation Integration Agreement and to the extent of conflict between this Tariff and the Generation Integration Agreement respecting limitations on liability, the Generation Integration Agreement shall control.

10.3 Limitation on Direct Damages:

(a) For each incident in which the Transmission Owner, any generation owner or operator, load facility owner or operator, Scheduling Coordinator,

aggregator or other agent is found liable for damages resulting from any act or omission that results in an Electric Disturbance that causes an interruption, deficiency or imperfection of service, such entity's liability in total to all persons so affected (other than such entity's own retail customers) shall be limited to Property Damage, but in an amount not to exceed the greater of \$500,000 or, in the case of a Transmission Owner, in an amount determined by multiplying 0.0025 by the Transmission Owner's annual revenue from the use of its transmission system[*need to define transmission system?*], except to the extent that such entity is found liable for gross negligence or intentional misconduct, in which case the preceding limits on Property Damage shall not apply.

(b) For each incident in which RTO West is found liable for damages resulting any act or omission that results in an Electric Disturbance that causes an interruption, deficiency or imperfection of service, the RTO West's liability in total to all persons so affected shall be limited to Property Damage, but in an amount not to exceed \$5,000,000, except to the extent that RTO West is found liable for gross negligence or intentional misconduct, in which case the preceding limits on Property Damage shall not apply.

10.4 Liability for Wrongful Dispatch Orders.

10.4.1 This section shall apply to claims by a Party against RTO West for damages arising from a Wrongful Dispatch Order issued by RTO West.

10.4.2 In the event RTO West issues a Wrongful Dispatch Order to a Party or a [Scheduling Coordinator], then in such event:

10.4.2.1 No provision of this Tariff shall be construed as requiring any Party to follow such operating instruction; and

10.4.2.2 If a Party complies, or attempts to comply, with such a Wrongful Dispatch Order and such Party incurs loss or damage as a result, then in such a case such Party shall be entitled to recover from RTO West as follows:

10.4.2.2.1 where a sale schedule has been interrupted by RTO West and the damaged Party is a purchaser purchasing for its own load, the amount by which the Replacement Power Cost (actually purchased or for which liquidated damages are paid) exceeds the price at which the purchase transactions sale would have occurred absent the Wrongful Dispatch Order, less any liquidated damages paid to the damaged Party by a third person; or

10.4.2.2.2 where a generator specific sale schedule has been interrupted by RTO West and the damaged Party is selling power into the market, the amount by which Replacement Power Cost exceeds the fuel and variable operation, and maintenance cost and a reasonable allocation of the overhead, depreciation and fixed costs allocable to the generation of electric energy of such generator, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the schedule interruption less any liquidated damages paid to the damaged Party by a third person; or a seller generating its own generation, the amount of

margin lost by such Party, measured as the difference between the original sale price and the price the seller actually obtained for resale of the interrupted capacity and energy, or absent resale, measured as the original sales price less the fuel and variable operation, and maintenance cost not incurred by such Party, provided that such Party makes reasonable efforts to resell such capacity and energy; or

10.4.2.2.3 where a sale schedule is interrupted by RTO West and the damaged Party is a purchaser who that has resold the purchased generation at wholesale, the amount by which Replacement Power Cost exceeds the interrupted original purchase cost, plus any liquidated damages that the damaged Party is legally obligated to pay as a result of the schedule interruption less any liquidated damages paid to the damaged Party by a third person; or margin between the original purchase and original sale is reduced after the contract remedies of the original purchase and original sale are applied; or

10.4.2.2.4 where a sale schedule has not been interrupted by RTO West, but the damaged Party is a generating Party selling its own generation which Party was prevented from making a sale as a direct result of a Wrongful Dispatch Order, the amount for the electric energy that would have been sold priced at 125% of the applicable Mid-Columbia Dow Jones daily on-peak or off-peak index price (until such time as a published hourly Northwest power price index is established and available), for the unused capacity or other applicable index as agreed by

the Parties, less the fuel and variable operation, and maintenance costs and a reasonable allocation of overhead, depreciation and fixed costs allocable to the generation of electric energy which would have been incurred had the sale of such capacity occurred.

10.4.2.3 With respect to claims under subsection 10.4.2.1 or 10.4.2.2, a Party shall provide reasonable justification to support its claim.

10.4.3 The amounts recoverable under subsection 10.4.2 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy against RTO West for a Wrongful Dispatch Order.